

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK**

In re:

TASHANNA GOLDEN

Debtor

Case No. 16-40809 (ESS)
Chapter 7

DEBTOR'S MOTION TO REOPEN CHAPTER 7 CASE

Debtor Tashanna Golden, by her counsel Austin C. Smith, here moves this Court for an order reopening the Debtor's Chapter 7 case pursuant to 11 U.S.C. § 350 (b) of the Bankruptcy Code and Rules 5010 and 4007 of the Federal Rules of Bankruptcy Procedure. The grounds for this motion are set forth in Debtor's Affirmation in Support of Debtor's Notice of Motion to Reopen Chapter 7 Case, filed herewith.

This Motion shall be heard on January 5, 2017 at 9:30 a.m. or as soon thereafter as counsel may be heard, before the Honorable Elizabeth S. Stong, United States Bankruptcy Judge for the Eastern District of New York, 271-C Cadman Plaza East, Courtroom 3585, Brooklyn, NY, 11201, for an Order reopening Debtor's Chapter 7 Case.

Any opposition papers to this Motion are due to be filed via ECF and served no later than December 22, 2016.

Respectfully submitted,

December 6, 2016

/s/Austin Smith
SMITH LAW GROUP
3 Mitchell Place
New York, NY 10017
917-992-2121
austin@acsmithlawgroup.com

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK**

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Case No. 16-40809 (ESS)
Chapter 7

DEBTOR'S NOTICE OF MOTION TO REOPEN CHAPTER 7 CASE

PLEASE TAKE NOTICE that upon the annexed affirmation, Tashanna Golden (“Debtor” or “Golden”) by and through the Smith Law Group, will move this Court on January 5, 2017 at 9:30 a.m. or as soon thereafter as counsel may be heard, at the United States Bankruptcy Court for the Eastern District of New York, 271-C Cadman Plaza East, Brooklyn, New York, 11201, Courtroom 3585, before the Honorable Elizabeth S. Stong, for an Order:

- a) Reopening the Debtor's Chapter 7 case pursuant to 11 U.S.C. § 350 (b) of the Bankruptcy Code and Rules 5010 and 4007 of the Federal Rules of Bankruptcy Procedure, for the purpose of seeking:
- i. Declaratory relief that Golden's private student loans (the "Debts") were discharged by operation of law on August 3, 2016 because they are not educational debts excepted from discharge by section 523(a)(8);
 - ii. An award of actual damages and sanctions for violations of the discharge injunction;
 - iii. An award of a reasonable attorneys' fees; and

iv. Other just relief that this Court deems proper.

Respectfully submitted,

December 6, 2016

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**AFFIRMATION IN SUPPORT OF DEBTOR’S NOTICE OF MOTION TO REOPEN
CHAPTER 7 CASE**

I, Austin C. Smith, an attorney at law admitted to practice before this Court, being mindful of the penalties of perjury, duly swears as follows:

1. I am attorney with the Smith Law Group.
2. I am attorney for Tashanna Golden (“Debtor”), and as such am familiar with the facts and circumstances of this matter.
3. I submit this affirmation in support of the instant motion to reopen Debtor’s case pursuant to section 350 of the Bankruptcy Code in order to obtain a determination of dischargeability and to accord further relief to Debtor.
4. Debtor seeks declaratory relief that her private education loans (the “Debts”) were discharged by operation of law on August 3, 2016 and a finding that AES, National Collegiate Trust, Firstmark Services, JP Morgan Chase, and GoldenTree Asset Management LP willfully violated this Court’s discharge injunction under section 524 of the Bankruptcy Code.

5. This court has jurisdiction over violations of the discharge injunctions as core matters arising under the Bankruptcy Code pursuant to 28 U.S.C. 157 and 28 U.S.C. 1409.
6. Venue is proper in the Eastern District of New York under 28 U.S.C. 1409(a).
7. On February 29, 2016, Debtor filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code in the United States Bankruptcy Court for the Eastern District of New York.
8. Debtor listed on Schedule F certain “student loans” owed “AES/Jpmgn ch,” “Fm/slfv tru,” “AES/NCT” (collectively as the “Private Student Loan Creditors”) in the aggregate amount of \$21,481.
9. On or about August 3, 2016, this Court issued a discharge order in Debtor’s bankruptcy proceeding.
10. On or about August 5, 2016, all creditors received notice of discharge.
11. Debtor did not enter into an agreement under section 524(c) of the Bankruptcy Code.
12. The Debts are not non-dischargeable student loans or conditional educational grants under section 523(a)(8).
13. None of the Private Student Loan Creditors filed an adversary proceeding contesting dischargeability under section 523(a)(8), although it was their legal burden to do so before commencing collection efforts.

14. The Debts were therefore discharged by operation of law pursuant to section 727(b) of the Bankruptcy Code.¹
15. Notwithstanding, the Private Student Loan Creditors and/or their agents misrepresented the Debts to Golden as non-dischargeable debt and initiated monthly collection efforts on the discharged debts.
16. Debtor now seeks to reopen this bankruptcy case in order to obtain relief.
17. Federal Rule of Bankruptcy Procedure 5010 provides “[a] case may be reopened on the motion of the debtor . . . pursuant to section 350 of the Code.”
18. Section 350 of the Bankruptcy Code permits the bankruptcy court to reopen a case “to administer assets, accord relief to the debtor, or for other cause.”
19. Rule 4007 of the Federal Rules of Bankruptcy states that a “case may be reopened” at any time “for the purpose of filing a complaint to obtain a determination” of discharge.
20. Seeking relief for violation of the discharge order is also an appropriate reason for reopening a case.²

¹ *In re Haroon*, 313 B.R. 686, 689 (Bankr. E.D. Va. 2004) (“A student loan creditor is not required to seek a dischargeability determination during the pendency of the bankruptcy case. The failure to seek a dischargeability determination does not alter the fact that the debt is or is not discharged upon entry of the discharge order. It merely avoids a judicial declaration of that fact at that time . . . The parties' rights were fixed at that time and, if the debt was discharged, the creditor was barred from collecting it. The fact that they may not have agreed as to what that status was is immaterial. The status, although perhaps unknown to the parties or disputed by them, was fixed by the discharge order. Neither was obligated to commence a dischargeability action to resolve that issue and the failure to do so did not alter the status of the debt. There are ramifications from not seeking a dischargeability determination, that is, whether the debt falls within an exception of § 523. One ramification is that a creditor who attempts to collect the debt proceeds at his own peril and accepts the consequences of his own actions. If a creditor wants to avoid the adverse consequences of an erroneous analysis, he can come to this court at any time, even after the case has been closed, and seek an adjudication of the dischargeability issue. 4 Collier on Bankruptcy, ¶ 523.04 (15th ed. revised 2004). If he fails to do that and seeks to collect the debt, the debtor may use a show cause order to have this determination made. ***If the creditor is wrong and the debt was discharged, he has violated § 524.***”) (emphasis added).

21. The decision to reopen is within the sound discretion of the Court.

WHEREFORE, Debtor respectfully requests the entry of an Order reopening this Chapter 7 case.

December 6, 2016

Respectfully submitted,

/s/ Austin Smith
SMITH LAW GROUP
3 Mitchell Place
New York, NY 10017
917-992-2121
austin@acsmithlawgroup.com

² See, e.g., *In re Szenes*, 515 B.R. 1, 3 (Bankr. E.D.N.Y. 2014) (“The debtors, Mr. and Mrs. Szenes, previously filed, on notice to U.S. Bank, a motion to reopen their chapter 7 case under section 350 of the Bankruptcy Code . . . the limited purpose of permitting the debtors to present their claim that U.S. Bank violated the discharge injunction by seeking to collect its debt as a personal liability from them after the debt has been discharged and the bankruptcy case closed. A hearing on the Motion to Reopen was held before the Court on June 5, 2014 and the Motion to Reopen was granted.”).

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(Proposed)
ORDER REOPENING CHAPTER 7 CASE

The matter having come before the Court upon Debtor's filing of a Motion to Reopen Chapter 7 Case; and this Honorable Court otherwise being fully advised in the premises:

IT IS FURTHER ORDERED that the above-captioned Chapter 7 Bankruptcy case is reopened to allow Debtor to seek declaratory relief, actual damages, and sanctions for violations of the discharge injunction.

/s/ Austin Smith
SMITH LAW GROUP
3 Mitchell Place
New York, NY 10017
917-992-2121
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CERTIFICATE OF SERVICE

I, Austin Smith, hereby certify that on the 6th day of December, 2016, I served the foregoing Amended Notice Of Motion to Reopen Chapter 7 Case, Affirmation in Support of the Amended Notice of Motion, Proposed Order, and this Certificate of Service using the ECF Filing System and by depositing said copies in the U.S. mail, postage prepaid, properly addressed as follows:

**GoldenTree Asset Management LP
ATTN: Officer, General Counsel or Agent
300 Park Ave
21st Floor
New York, NY 10022**

**JP Morgan Chase Bank
c/o CT Corporation System
ATTN: Officer or Agent
111 8th Ave, 13th Floor
New York, NY 10017**

**National Collegiate Trust
C/o Transworld Systems Inc.
ATTN: Officer, Agent, or Bankruptcy Litigation Department
PO Box 4275
Norcross, GA 30091**

**Firstmark Services
ATTN: Officer, General Counsel, or Agent
P.O. Box 82522
Lincoln, NE 68501**

**AES Credit
ATTN: Officer, Agent or General Counsel
P.O. Box 61047
Harrisburg, PA 17106**

Respectfully submitted,

December 6, 2016

/s/ Austin Smith
SMITH LAW GROUP
3 Mitchell Place
New York, NY 10017
917-992-2121
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